

DeAnn M. Pladson Testimony to Judicial Process Committee.

Date: February 10, 2010, @ 9:00 a.m.

Place: Rough Rider Room, State Capitol, Bismarck, North Dakota

My name is DeAnn Pladson, and I am an attorney licensed in North Dakota and Minnesota. I have over 17 years of experience practicing primarily in the area of Family Law including highly contested divorce, child custody, parenting time disputes and child support issues. I also provide services to the court performing parenting investigations and guardian ad litem work. I work primarily in Fargo, North Dakota, and Moorhead, Minnesota. I was asked to address any concerns or issues regarding child support as it relates to my practice of law. There are a few areas of concern.

Child Care Expenses

One area of concern is child care expenses for the children. It is not uncommon to see child care expenses range from \$400 a month to over \$1,000 per month. It is also not unusual to see court orders for child support in an amount that is equal to or less than child care expenses for the entire month. This leaves the custodial parent with no money to provide for basic needs for their minor children. The courts in North Dakota are allowed to deviate from the child support guidelines to consider daycare expenses for the minor children. However, this deviation is discretionary with the court. Oftentimes litigants will not risk the cost and expense of going to court to try to secure an upward deviation. In these types of cases, we see child support orders which are not sufficient to meet the basic needs of the minor children.

I can speak to how the State of Minnesota handles child care expenses. Child care expenses are paid by each parent on a pro rata share of their parental income for

determining child support. The pro rata share is determined by looking at each parent's percentage of the total income after deducting the tax benefits of paying the daycare expenses. North Dakota does not have an income share's model for determining child support. Rather, they look strictly at the net income of the child support obligor.

It would be helpful to practitioners and the Court to have guidelines developed to assist the in determining when to deviate from the guideline amount of support for purposes of paying for the increased needs of the children relating to child care expenses.

Modifications for Obligor

It is not uncommon for practitioners to see, especially in the last three or four years, the request for modification of child support due to the economic downturn or loss of jobs. Unfortunately, when this happens, there are no self-help measures that may be utilized by a child support obligor to lessen the financial burden during this time. The child support enforcement units do not provide assistance to alleviate this circumstance. The remedy of the obligor appears to be limited to hiring an attorney which may be time consuming and expensive or doing nothing and allowing the arrears to accrue. It is my understanding that there is a pilot program designed to address this very issue. I cannot speak to the efficiency or success of this pilot program; however, there is certainly a need for this type of assistance. In tough economic times, custodial parents are looking to the child support now more than ever. To have it stopped entirely can have a devastating impact on the family. Working with these obligors to

keep the child support being paid at a reasonable rate assists the obligor and the family in ensuring payments are being made and received.

Enforcement for Out of State Obligor

A situation which I have run into very recently, is the enforcement of a North Dakota court order when the obligor lives out of state. Are there any remedies for this type of situation? A North Dakota court order is in effect, but the obligor works in another state. He quits his job and begins working for cash. The custodial parent is getting no child support and cannot afford an attorney. Is there any way to give these people access to the courts? Are there enforcement mechanisms out there to address this situation? It is my understanding that the vast majority of the child support obligors pay their support on time and according to the court order; but for those that do not, the result can be devastating.

Available Enforcement Measures

I have not seen the Court use the available enforcement measures to ensure payment of child support. North Dakota Century Code Section 14-08.1-06 states as follows:

When considering a contempt citation against a child support obligor who is in arrears in child support in an amount greater than three times the monthly child support obligation and the obligor is not current in a court-established plan to repay the unpaid child support arrears, or who has failed, after receiving appropriate notice, to comply with a subpoena relating to a paternity or child support matter, the court shall address and make specific findings on the issue of whether the obligor has or may obtain an occupational, professional, or recreational certificate, permit, or license that the court may withhold or suspend. The court may withhold or suspend any certificate, permit, or license issued by or on behalf of the state or any of its licensing authorities or occupational or professional boards, which the obligor is required to obtain prior to engaging in the

obligor's occupation or profession. The court may withhold or suspend any certificate, permit, or license issued by lottery or by tag by the director of the game and fish department, which the obligor is required to obtain prior to engaging in a recreational activity. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to pay child support, the court shall notify the obligor that the decision becomes final thirty days after the notification unless the obligor satisfies or makes arrangements to pay the entire outstanding payment due. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to comply with a subpoena relating to a paternity or child support matter, the court shall notify the obligor that the decision becomes final unless the obligor complies with the subpoena within a time set by the court. The court shall notify the appropriate licensing authority, occupational or professional board, or the director of the game and fish department of the court's decision to withhold or suspend an obligor's certificate, permit, or license. A certificate, permit, or license withheld or suspended by an order issued under this section may be reissued only by order of the court. An appeal by an obligor who has had a certificate, permit, or license suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority, occupational or professional board, or the director of the game and fish department.

North Dakota Century Code Section 14-08.1-07 addresses the revocation of the obligor's driver's license for the failure to pay support. There is no recent case law which discusses this as an enforcement mechanism. I can certainly see that the court would want to very carefully dole out this remedy. However, taking away a persons transportation may have a impact on the obligor's ability to get and or keep a job, so the Court's are likely to use the remedy sparingly.

More Communication

Every time I have had to deal with the Child Support Enforcement Unit, they are helpful, friendly and conscientious. They have policies which must be followed. However, the general practitioner does not always know how the child support orders

should be drafted and what can and cannot be done in certain situations (for example, offsetting child support obligations, expungement, waiver of support, temporary order etc.) As a point for the good of the order, whatever comes out of this study, I would recommend that the Enforcement Unit take an active role in educating practitioners on various issues to avoid situations where arrears accrue when they are not intended, private payments can be adequately considered and court order can be carefully drafted and therefore honored.